



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF VERIFIED JOINT PETITION OF)
ABOVENET, INC., ABOVENET COMMUNICATIONS,)
INC. AND ZAYO GROUP, LLC FOR APPROVAL (1))
FOR THE TRANSFER OF INDIRECT CONTROL OF)
ABOVENET COMMUNICATIONS, INC. TO ZAYO)
GROUP, LLC; (2) FOR ZAYO GROUP LLC TO ENTER)
INTO NEW FINANCING ARRANGEMENTS; AND (3))
FOR ABOVENET COMMUNICATIONS, INC. TO)
PARTICIPATE IN NEW FINANCING ARRANGEMENTS)
OF ZAYO GROUP, LLC)

ORDER

DOCKET NO. TM12030267

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 23, 2012, AboveNet, Inc. ("ABN-Parent"), AboveNet Communications, Inc. ("AboveNet") and Zayo Group, LLC ("Zayo") (collectively, the "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9 filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority from the Board to (1) to complete the transfer of indirect control of AboveNet to Zayo, (2) for Zayo to enter into new financing arrangements and (3) for AboveNet to participate in the in the new financing arrangements of Zayo (collectively, the "Transactions"). Following the transfer, AboveNet will continue to offer services at the same terms, rates and conditions on which it currently offers such services in the state.

BACKGROUND

ABN-Parent is a publicly-held Delaware corporation with principal offices located in White Plains, New York. AboveNet is a Delaware corporation and a wholly owned direct subsidiary of ABN-Parent. ABN-Parent and its subsidiaries, including AboveNet, provide dedicated end-to-end fiber optic infrastructure and high-bandwidth Internet connectivity, both domestically and internationally. Collectively, AboveNet and its subsidiaries are authorized to provide

telecommunications services in 32 states and the District of Columbia. In New Jersey, AboveNet (f/k/a Metromedia Fiber Network Services, Inc.) was authorized to provide dedicated and private line services. See Order, I/M/O the Petition of Metromedia Fiber Network Services, Inc. Requesting Authority to Provide Dedicated and Private Line Telecommunications Services throughout New Jersey, Docket No. TE98040202, dated September 14, 1998. Currently, AboveNet has 51 employees in New Jersey.

Zayo is a Delaware limited liability company with principal offices located in Louisville, Colorado. Zayo is a direct subsidiary of Zayo Group Holdings, Inc., a Delaware corporation which is wholly owned by Communications Investment, LLC ("CII") which has no majority owner. According to the petition, Zayo is a provider of bandwidth infrastructure and network neutral collocation and interconnection services over regional and metropolitan fiber networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications providers, media and content companies, and certain bandwidth-intensive enterprises. Zayo holds authorization to provide intrastate telecommunications services in 42 states and the District of Columbia. In New Jersey, Zayo is authorized to provide local exchange and interexchange telecommunications services. See Order, In the Matter of the Petition of Zayo Group, LLC for Approval to Provide Local Exchange, InterExchange and Exchange Access Telecommunications Services Throughout the State of New Jersey, Docket No. TE11020049, dated May 16, 2011. Additional information and qualifications of Zayo can be found in that Order.

DISCUSSION

According to the petition, pursuant to the terms of an Agreement and Plan of Merger dated March 18, 2012, by and among Zayo, Voila Sub, Inc. (a wholly owned direct subsidiary of Zayo created for the purposes of the merger) ("Merger Sub") and ABN-Parent (the "Agreement"), Zayo will acquire all of the outstanding equity interests in ABN-Parent (the "AboveNet Merger"). As described in the petition, Merger Sub will merge with and into ABN-Parent, whereupon the separate existence of Merger Sub will cease and ABN-Parent will be the surviving corporation. Petitioners state that AboveNet will continue to operate pursuant to its existing authorizations and customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transaction and, therefore, the transaction will be seamless and transparent to customers. The only immediate change resulting from the AboveNet Merger will be that AboveNet will be ultimately owned by Zayo.

Zayo is also requesting Board approval, pursuant to N.J.S.A. 48:3-7 and 48:3-9, to participate in certain financing transactions in connection with the transfer of control. Zayo plans to issue up to \$3 billion in indebtedness which will consist of long-term indebtedness in the form of term loans, revolving credit facilities and notes or debentures.

Zayo expects that any long-term indebtedness incurred as part of the new financing to mature between six and eight years after issuance. Interest will be at the market rate at the time of closing. Interest will be a floating rate consisting of the London Interbank Offered Rate ("LIBOR") or a prime rate plus an agreed margin.

Secured facilities will amount to \$2.5 billion of the new financing with the remaining \$500 million being unsecured facilities. In order to maintain flexibility, Petitioners are seeking approval for the full \$3 billion to be secured with security interests in the assets of Zayo and its current and future subsidiaries, including AboveNet.

The Petition states that proceeds from the financing will be used to fund a portion of the AboveNet Merger, repay and redeem AboveNet Inc. and its subsidiaries existing indebtedness of \$55 million, and repay and redeem Zayo's existing indebtedness of \$710 million. A portion of the proceeds may be used for working capital and general corporate purposes of the combined company. The financing will allow Zayo to complete its acquisition of ABN-parent which will combine the companies' complementary networks, making AboveNet and Zayo stronger competitors in New Jersey, in the Northeast Region and nationally, thereby benefiting New Jersey consumers.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees.

The Petitioners assert that as part of Zayo, AboveNet will continue to provide high-quality telecommunications services to consumers, while gaining access to the additional resources and operational expertise of Zayo. Petitioners state that AboveNet will also benefit by being able to offer services to multi-location business and enterprise customers across a much larger footprint in combination with Zayo. Petitioners further state that AboveNet's network complements Zayo's network and the acquisition will increase Zayo's existing fiber footprint, giving the combined companies greater market depth as a result of the Transactions. Petitioners assert that the Transactions will make Zayo and AboveNet stronger competitors and thereby benefit consumers.

The Board's review indicates that the financing transactions and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioners operate, the Board is satisfied that the transactions will not have an adverse impact on Petitioners' operations in New Jersey.

FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since AboveNet's New Jersey customers will continue to receive the same services from the same entity at the same rates and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen AboveNet's competitive posture in the telecommunications market due to its access to additional resources. In addition, the Board is persuaded that Zayo will make every effort to minimize any potential adverse impact to employees in New Jersey.

Accordingly, the Board FINDS that the proposed Transactions will have no material impact on the rates of current customers, or on employees. The Board also FINDS that the Transactions will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board FINDS that the proposed AboveNet Merger is in accordance with the law and in the public interest, and HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within 7 days of the consummation of the transfer.

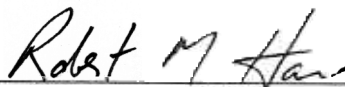
The Board FINDS that the proposed transaction is consistent with the applicable law and the public interest. The Board therefore, approves the purposes thereof. The Board HEREBY AUTHORIZES the petitioners to provide their guarantee, serve as co-borrowers, or otherwise provide security in connection with financing up to \$3 billion.

This Order is subject to the following provisions.

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.
4. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

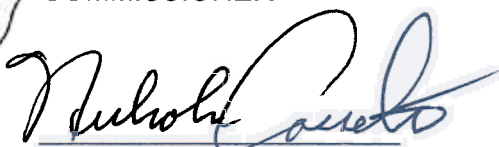
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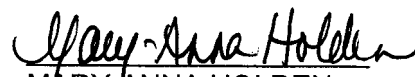
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

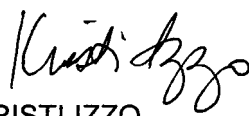

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JOSEPH L. FIORDALISO
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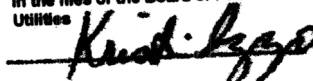

NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



I/M/O VERIFIED JOINT PETITION OF ABOVENET, INC., ABOVENET COMMUNICATIONS, INC. AND ZAYO GROUP, LLC FOR APPROVAL (1) FOR THE TRANSFER OF INDIRECT CONTROL OF ABOVENET COMMUNICATIONS, INC. TO ZAYO GROUP, LLC; (2) FOR ZAYO GROUP LLC TO ENTER INTO NEW FINANCING ARRANGEMENTS; AND (3) FOR ABOVENET COMMUNICATIONS, INC. TO PARTICIPATE IN NEW FINANCING ARRANGEMENTS OF ZAYO GROUP, LLC
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